

## Environmental Protection Agency

## §211.212-2

must be labeled according to this subpart, and must comply with the Labeled Values of mean attenuation.

(b) A manufacturer must take into account both product variability and test-to-test variability when labeling his devices in order to meet the requirements of paragraph (a) of this section. A specific category is considered when the attenuation value at the tested one-third octave band is equal to or greater than the Labeled Value, or mean attenuation value, stated in the supporting information required by §211.204-4, for that tested frequency. The attenuation value must be determined according to the test procedures of §211.206. The Noise Reduction Rating for the label must be calculated using the Labeled Values of mean attenuation that will be included in the supporting information required by §211.204-4.

[47 FR 57717, Dec. 28, 1982]

### §211.212 Compliance audit testing.

#### §211.212-1 Test request.

(a) The Administrator will request all testing under this section by means of a test request addressed to the manufacturer.

(b) The test request will be signed by the Assistant Administrator for Enforcement or his designee. The test request will be delivered by an EPA Enforcement Officer or sent by certified mail to the plant manager or other responsible official as designated by the manufacturer.

(c) In the test request, the Administrator must specify the following:

(1) The hearing protector category selected for testing;

(2) The manufacturer's plant or storage facility from which the protectors must be selected;

(3) The selection procedure the manufacturer will use to select test protectors;

(4) The test facility where the manufacturer is required to have the protectors tested;

(5) The number of protectors to be forwarded to the designated test facility and the number of those protectors which must be tested by the facility.

(6) The time period allowed for the manufacturer to initiate testing; and

(7) Any other information that will be necessary to conduct testing under this section.

(d) The test request may provide for situations in which the selected category is unavailable for testing. It may include an alternative category to be selected for testing in the event that protectors of the first specified category are not available because the protectors are not being manufactured at the specified plant, at the specified time, and are not being stored at the specified plant or storage facility.

(e)(1) Any testing conducted by the manufacturer under a test request must commence within the period specified within the test request. The Administrator may extend the time period on request by the manufacturer, if a test facility is not available to conduct the testing.

(2) The manufacturer must complete the required testing within one week following commencement of the testing.

(3) The manufacturer will be allowed 1 calendar week to send test hearing protectors from the assembly plant to the testing facility. The Administrator may approve more time based upon a request by the manufacturer. The request must be accompanied by a satisfactory justification.

(f) Failure to comply with any of the requirements of this section will not be considered a violation of these regulations if conditions and circumstances outside the control of the manufacturer render it impossible for him to comply. These conditions and circumstances include, but are not limited to, the temporary unavailability of equipment and personnel needed to conduct the required tests. The manufacturer bears the burden of establishing the presence of the conditions and circumstances.

(Sec. 13. Pub. L. 92-574, 86 Stat. 1244 (42 U.S.C. 4912))

[44 FR 56139, Sept. 28, 1979, as amended at 45 FR 8275, Feb. 6, 1980; 47 FR 57717, Dec. 28, 1982]

#### §211.212-2 Test hearing protector selection.

(a) The test request will specify the number of test protectors which will be selected for testing from the number of

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protectors delivered to the test facility in accordance with §211.212-1(c)(5). The remainder may be used as replacement protectors if replacement is necessary. The test request will also specify that the protectors be selected from the next batch scheduled for production after receipt of the test request.

(b) If random selection is specified, it must be achieved by sequentially numbering all the protectors in the group and then using a table of random numbers to select the test hearing protectors. The manufacturer may use an alternative random selection plan when it is approved by the Administrator.

(c) Each test protector of the category selected for testing must have been assembled, by the manufacturer, for distribution in commerce using the manufacturer's normal production process.

(d) At their discretion, EPA Enforcement Officers, rather than the manufacturer, may select the protectors designated in the test request.

(e) The manufacturer must keep on hand the test protectors designated for testing until such time as the category is determined to be in compliance. Hearing protectors actually tested and found to be in compliance with these regulations may be distributed in commerce.

(Sec. 13, Pub. L. 92-574, 86 Stat. 1244 (42 U.S.C. 4912))

[44 FR 56139, Sept. 28, 1979, as amended at 45 FR 8275, Feb. 6, 1980]

### §211.212-3 Test hearing protector preparation.

The manufacturer must select the test hearing protector according to §211.212-2 before the official test, and must comply with the test protector preparation requirements described in this subpart:

(a) A test hearing protector selected according to §211.212-2 must not be tested, modified, or adjusted in any manner before the official test unless the adjustments, modifications and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures.

(b) Quality controls, testing, assembly or selection procedures must not be, used on the completed protector or any portion of the protector, including

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parts, that will not normally be used during the production and assembly of all other protectors of that category to be distributed in commerce.

[47 FR 57717, Dec. 28, 1982]

### §211.212-4 Testing procedures.

(a) The manufacturer must conduct one valid test according to the test procedures specified in §211.206 for each hearing protector selected for testing under §211.212-2.

(b) The manufacturer must not repair or adjust the test hearing protectors once compliance testing has been initiated. In the event a hearing protector is unable to complete the test, the manufacturer may replace the protector. Any replacement protector will be of the same category as the protector being replaced. It will be selected from the remaining designated test protectors and will be subject to all the provisions of these regulations. Any replacement and the reason for replacement must be reported in the compliance audit test report.

(Sec. 13, Pub. L. 92-574, 86 Stat. 1244 (42 U.S.C. 4912))

### §211.212-5 Reporting of test results.

(a)(1) The manufacturer must submit to the Administrator a copy of the Compliance Audit Test report for all testing conducted under §211.212. It must be submitted within 5 days after completion of testing. A suggested compliance audit test report form is included as appendix B.

(2) The manufacturer must provide the following test information:

(i) Category identification;

(ii) Production date, and model of hearing protector;

(iii) The name and location of the test facility used;

(iv) The completed data sheet in the form specified for all tests including, for each invalid test, the reason for invalidation; and

(v) The reason for the replacement where a replacement protector was necessary.

(3) The manufacturer must provide the following statement and endorsement:

This report is submitted under section 8 and section 13 of the Noise Control Act of